

AMENDED IN ASSEMBLY MAY 26, 2009

AMENDED IN ASSEMBLY MAY 4, 2009

AMENDED IN ASSEMBLY APRIL 13, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 233

Introduced by Assembly Member Smyth

**(Coauthors: Assembly Members Adams, Bill Berryhill, Duvall,
Garrick, Jeffries, Nestande, Silva, and Solorio)**
(Coauthors: Senators Maldonado and Strickland)

February 5, 2009

An act to amend Section 17076 of, ~~and to add Section 17239 to, and to add and repeal Article 18 (commencing with Section 18891) of Chapter 3 of Part 10.2 of Division 2 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 233, as amended, Smyth. Personal income tax: deductions: pet adoption ~~costs~~: *costs: voluntary contributions*.

The Personal Income Tax Law allows various deductions in computing the income that is subject to the taxes imposed by that law.

This bill would allow for taxable years beginning on or after January 1, 2010, and before January 1, 2015, a deduction under that law for the qualified costs paid or incurred during the taxable year by a taxpayer for the adoption of pets from a qualified animal rescue organization, as defined.

~~This bill would take effect immediately as a tax levy.~~

Existing law relating to the administration of personal income taxes authorizes individual taxpayers to contribute amounts in excess of their tax liability for the support of specified funds or accounts.

This bill would allow individual taxpayers to designate on their tax returns, that a specified amount in excess of their tax liability be transferred to the Pet Adoption Cost Deduction Fund, which would be created by this bill. This bill would provide that all moneys contributed to the fund, upon appropriation by the Legislature, be allocated to the Franchise Tax Board and the Controller for reimbursement of costs, as provided, to the Controller for reimbursement of the General Fund for revenue losses from providing the deduction for pet adoption costs, and to the Department of Food and Agriculture for purposes relating to abandoned and impounded animals.

This bill would provide that these voluntary contribution provisions are repealed on either January 1 of the 5th taxable year following the taxable year the fund first appears on the personal income tax return or on January 1 of an earlier calendar year, if the Franchise Tax Board estimates that the annual contribution amount will be less than \$250,000, or an adjusted amount, as specified, for subsequent taxable years.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 17076 of the Revenue and Taxation Code
- 2 is amended to read:
- 3 17076. (a) Section 67 of the Internal Revenue Code, relating
- 4 to the 2-percent floor on miscellaneous itemized deductions, shall
- 5 apply, except as otherwise provided.
- 6 (b) A deduction allowable under this part that exceeds three
- 7 thousand dollars (\$3,000) and is described in Section 17049,
- 8 relating to computation of tax where taxpayer restores a substantial
- 9 amount held under claim of right, may not be treated as a
- 10 miscellaneous itemized deduction under Section 67 of the Internal
- 11 Revenue Code, as applicable for purposes of this part.
- 12 (c) The deduction allowed by Section 17239, relating to pet
- 13 adoption costs, may not be treated as a miscellaneous itemized
- 14 deduction under Section 67(a) of the Internal Revenue Code.

SEC. 2. Section 17239 is added to the Revenue and Taxation Code, to read:

17239. (a) For each taxable year beginning on or after January 1, 2010, and before January 1, 2015, there shall be allowed as a deduction an amount equal to the qualified costs paid or incurred during the taxable year by a taxpayer for the adoption of a pet from a qualified animal rescue organization.

(b) For the purposes of this section, the following definitions shall apply:

(1) "Pet" means an animal adopted from a qualified animal rescue organization that is not used by the taxpayer in a trade or business or for the production of income.

(2) "Qualified animal rescue organization" means a public animal control agency or shelter, humane society shelter, or rescue group. A rescue group as used in this section is a not-for-profit entity, as defined in Section 501(c)(3) of the Internal Revenue Code, whose primary purpose is the placement of dogs, cats, or other animals that have been removed from a public animal control agency or shelter, society for the prevention of cruelty to animals shelter, or humane society, or that have been surrendered or relinquished to the entity by the previous owner.

(3) "Qualified costs" means amounts paid or incurred to a qualified animal rescue organization to adopt a pet, not to exceed one hundred dollars (\$100).

(c) The deduction allowed under this section for a taxable year shall not exceed one hundred dollars (\$100).

(d) (1) (A) *The deduction under this section shall be allowed for a taxable year only if claimed on a timely filed original return for that taxable year received by the Franchise Tax Board on or before the cut-off date established by the Franchise Tax Board for the taxable year.*

(B) *For purposes of this paragraph, the cut-off date for a taxable year shall be the last day of the calendar quarter within which the Franchise Tax Board estimates it will have received timely filed original returns for the taxable year claiming deductions under this section that cumulatively total one million dollars (\$1,000,000) for that taxable year.*

(2) *The date a return is received shall be determined by the Franchise Tax Board.*

1 (3) (A) *The determinations of the Franchise Tax Board with*
2 *respect to the cut-off date, the date a return is received, and*
3 *whether a return has been timely filed for purposes of this*
4 *subdivision may not be reviewed in any administrative or judicial*
5 *proceeding.*

6 (B) *Any disallowance of a deduction claimed due to a*
7 *determination under this subdivision, including the application of*
8 *the limitation specified in paragraph (1), shall be treated as a*
9 *mathematical error appearing on the return. Any amount of tax*
10 *resulting from such disallowance may be assessed by the Franchise*
11 *Tax Board in the same manner as provided by Section 19051.*

12 (4) *The Franchise Tax Board shall periodically provide notice*
13 *on its Internet Web site with respect to the amount of deductions*
14 *under this section claimed on timely filed original returns received*
15 *by the Franchise Tax Board.*

16 (e) *The Franchise Tax Board may prescribe rules, guidelines,*
17 *or procedures necessary or appropriate to carry out the purposes*
18 *of this section.*

19 (f) *Chapter 3.5 (commencing with Section 11340) of Part 1 of*
20 *Division 3 of Title 2 of the Government Code shall not apply to*
21 *any determination, rule, notice, or guideline established or issued*
22 *by the Franchise Tax Board in implementing and administering*
23 *the reduction authorized by this section.*

24 SEC. 3. *Article 18 (commencing with Section 18891) is added*
25 *to Chapter 3 of Part 10.2 of Division 2 of the Revenue and Taxation*
26 *Code, to read:*

27
28 *Article 18. Pet Adoption Cost Deduction Fund*
29

30 18891. (a) *Any individual may designate on the tax return that*
31 *a contribution in excess of the tax liability, if any, be made to the*
32 *Pet Adoption Cost Deduction Fund, which is established by Section*
33 *18892.*

34 (b) *The contribution shall be in a full dollar amount and may*
35 *be made individually by each signatory on a joint return.*

36 (c) *A designation under subdivision (a) shall be made for any*
37 *taxable year on the original return for that taxable year, and once*
38 *made shall be irrevocable. In the event that any payment and credit*
39 *reported on the return, together with any other credit associated*
40 *with the individual's account, does not exceed the individual's tax*

1 liability, the return shall be treated as though no designation has
2 been made.

3 (d) If an individual designates a contribution to more than one
4 account or fund listed on the tax return, and the amount available
5 is insufficient to satisfy the total amount designated, the
6 contribution shall be allocated among the designees on a pro rata
7 basis.

8 (e) The Franchise Tax Board shall revise the form of the return
9 to include a space labeled "Pet Adoption Cost Deduction Fund"
10 to allow for the designation permitted under subdivision (a). The
11 form shall include in the instructions information that the
12 contribution may be in the amount of one dollar (\$1) or more and
13 that the contribution shall be used to reimburse the California
14 State General Fund for the reduction in receipts attributable to
15 the Pet Adoption Fee Deduction under Section 17239, with any
16 contributions in excess of the reduction in receipts used to provide
17 grants to eligible municipal shelters for the purpose of providing
18 food and shelter to abandoned and impounded animals.

19 (f) Notwithstanding any other provision, a voluntary contribution
20 designation for the Pet Adoption Cost Deduction Fund shall not
21 be added on the tax return until another voluntary contribution
22 designation is removed.

23 (g) A deduction shall be allowed under Article 6 (commencing
24 with Section 17201) of Chapter 3 of Part 10 for any contribution
25 made pursuant to subdivision (a).

26 18892. There is hereby established in the State Treasury the
27 Pet Adoption Cost Deduction Fund to receive contributions made
28 pursuant to Section 18891. The Franchise Tax Board shall notify
29 the Controller of the amount of money paid by taxpayers in excess
30 of their tax liability, the amount of refund money that taxpayers
31 have designated pursuant to Section 18891 to be transferred to
32 the Pet Adoption Cost Deduction Fund, and the amount of the
33 reduction in receipts attributable to the deduction authorized by
34 Section 17239. The Controller shall transfer from the Personal
35 Income Tax Fund to the Pet Adoption Cost Deduction Fund an
36 amount not in excess of the sum of the amounts designated by
37 individuals pursuant to Section 18891 for payment into that fund,
38 reduced by the amount of the reduction in receipts attributable to
39 the deduction authorized by Section 17239.

1 18893. (a) All money transferred to the Pet Adoption Fee
2 Deduction Fund shall, upon appropriation by the Legislature, be
3 allocated as follows:

4 (1) To the Franchise Tax Board and the Controller for
5 reimbursement of all costs incurred by the Franchise Tax Board
6 and the Controller in connection with their duties under this article.

7 (2) To the Controller for reimbursement of all losses incurred
8 by the General Fund in connection with providing tax deductions
9 for pet adoptions.

10 (3) (A) To the Department of Food and Agriculture for
11 distribution of grants to eligible municipal shelters for the purpose
12 of providing food and shelter to abandoned and impounded
13 animals. The department may use up to 5 percent of the money
14 allocated to municipal shelters for administrative costs incurred
15 in connection with the Pet Adoption Fee Deduction Fund.

16 (B) For the purposes of this article, “eligible municipal shelter”
17 means a city or county animal control agency or shelter that is
18 current on its reporting requirements to the State Department of
19 Public Health, Veterinary Public Health Section. The State
20 Department of Public Health shall, upon the written request of the
21 Department of Food and Agriculture, make available information
22 regarding whether a city or county animal control agency or
23 shelter is current on its reporting requirements pursuant to this
24 subparagraph.

25 (b) The Department of Food and Agriculture shall do all of the
26 following with respect to the distribution of grants:

27 (1) Accept applications for grants from eligible municipal
28 shelters.

29 (2) Process and approve, or reject all applications on a
30 first-come-first-served basis, in the following manner:

31 (A) Eligible municipal shelters processing fewer than 5,000
32 dogs and cats each year shall receive up to seven thousand five
33 hundred dollars (\$7,500), if funds are available.

34 (B) Eligible municipal shelters processing between 5,000 and
35 25,000 dogs and cats each year shall receive up to fifteen thousand
36 dollars (\$15,000), if funds are available.

37 (C) Eligible municipal shelters processing more than 25,000
38 dogs and cats shall receive up to twenty-two thousand five hundred
39 dollars (\$22,500), if funds are available.

1 (3) *Make applications available to eligible municipal shelters*
2 *on the first day of the second calendar year after the Pet Adoption*
3 *Fee Deduction Fund first appears on the tax return.*

4 (c) *In order to be eligible for grants authorized by this article,*
5 *eligible municipal shelters shall file an application with the*
6 *Department of Food and Agriculture, in the form and manner as*
7 *specified by the Department of Food and Agriculture.*

8 (d) *Any grants distributed under this article create an additional*
9 *funding source for food and shelter services and programs for*
10 *eligible municipal shelters and shall be used to supplement, not*
11 *supplant, other funding sources for these services and programs.*

12 18894. (a) *This article shall remain in effect only until January*
13 *1 of the fifth taxable year following the first appearance of the Pet*
14 *Adoption Cost Deduction Fund on the tax return, and as of that*
15 *date is repealed, unless a later enacted statute, that is enacted*
16 *before the applicable date, deletes or extends that date.*

17 (b) (1) *By September 1 of the second calendar year, and by*
18 *September 1 of each subsequent calendar year that the Pet*
19 *Adoption Cost Deduction Fund appears on a tax return, the*
20 *Franchise Tax Board shall do all of the following:*

21 (A) *Determine the minimum contribution amount required to*
22 *be received during the next calendar year for the fund to appear*
23 *on the tax return for the taxable year that includes that next*
24 *calendar year.*

25 (B) *Provide written notification to the Department of Food and*
26 *Agriculture of the amount determined in subparagraph (A).*

27 (C) *Determine whether the amount of contributions estimated*
28 *to be received during the calendar year will equal or exceed the*
29 *minimum contribution amount determined by the Franchise Tax*
30 *Board for the calendar year pursuant to subparagraph (A). The*
31 *Franchise Tax Board shall estimate the amount of contributions*
32 *to be received by using the actual amounts received and an*
33 *estimate of the contributions that will be received by the end of*
34 *that calendar year.*

35 (2) *If the Franchise Tax Board determines that the amount of*
36 *contributions estimated to be received during a calendar year will*
37 *not at least equal the minimum contribution amount for the*
38 *calendar year, this article is repealed with respect to taxable years*
39 *beginning on or after January 1 of that calendar year.*

1 (3) For purposes of this section, the minimum contribution
2 amount for a calendar year means two hundred fifty thousand
3 dollars (\$250,000) for the second calendar year after the first
4 appearance of the Pet Adoption Cost Deduction Fund on the
5 personal income tax return or the adjusted minimum contribution
6 amount adjusted pursuant to subdivision (c).

7 (c) For each calendar year, beginning with the third calendar
8 year that the Pet Adoption Cost Deduction Fund appears on the
9 tax return, the Franchise Tax Board shall adjust, on or before
10 September 1 of that calendar year, the minimum estimated
11 contribution amount specified in subdivision (b) as follows:

12 (1) The minimum estimated contribution amount for the calendar
13 year shall be an amount equal to the product of the minimum
14 contribution amount for the prior September 1 multiplied by the
15 inflation factor adjustment as specified in paragraph (2) of
16 subdivision (h) of Section 17041, rounded off to the nearest dollar.

17 (2) The inflation factor adjustment used for the calendar year
18 shall be based on the figures for the percentage change in the
19 California Consumer Price Index received on or before August 1
20 of the calendar year pursuant to paragraph (1) of subdivision (h)
21 of Section 17041.

22 ~~SEC. 3. This act provides for a tax levy within the meaning of~~
23 ~~Article IV of the Constitution and shall go into immediate effect.~~